

Applicant: Takemi Aonumar
Serial No.: 09/889,263
Filed: October 16, 2001
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REMARKS

Claims 1-18 were pending prior to this Response, with claims 2-11, 13-15, and 17-18 being withdrawn due to a restriction requirement. By the present communication, the Specification has been amended at paragraph [0017] to complete information regarding the sequence deposit for the claimed organism. In addition, paragraph [0043] has been replaced to introduce an amendment caused by an inadvertent error in designation of chitosan. Support for the amendment to paragraph [0043] is provided by the description therein. No new claims have been added, claims 2-4 have been cancelled without prejudice, and claim 1 has been amended to define Applicant's invention with greater particularity. The amendments add no new matter, being fully supported by the Specification and original claims. Accordingly, claims 1, 12 and 16 are currently pending in this application.

Amendment to the Drawing

A replacement drawing for Fig. 1 of the Specification is enclosed in which an amendment has been made to correct an inadvertent error in designating the provenance of the 1st Nucleotide Sequence. The 1st Nucleotide Sequence has been correctly identified as belonging to "Bacillus subtilis takemi" instead of "E. coli". Support for the amendment is found in the description of Fig. 1 in paragraph [0036] on page 14 of the Specification.

The Information Disclosure Statement

The Office Action indicates that the references in the Information Disclosure Statement submitted by Applicant on May 14, 2003 have been separated from the application and requests resubmission of the references. Accordingly, Applicant resubmits references named in the Information Disclosure Statement as originally mailed on May 14, 2003.

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The Rejection under 35 U.S.C. § 102

Applicant traverses the rejection of claims 1, 12 and 16 under 35 U.S.C. 102(b) as allegedly being anticipated by Heins et al. in light of Magnolato. Applicant submits that the invention microorganism, as defined by amended claim 1, distinguishes over Heins et al in light of Magnolato by requiring that the microorganism be "*Bacillus subtilis takemi* having deposit number FERM BP-6589, which is capable of reducing nitrates and contains chitin and/or chitosan in its cell walls and has a smell of coffee." Although the Examiner asserts that Heins et al. "discloses a food composition comprising a bacillus strain which appears to be identical to the presently claimed strain" (Office Action, page 3), the reference fails to disclose that the strain has a smell of coffee. On the other hand, Applicant discloses: "*Bacillus subtilis takemi* was confirmed to have a remarkable smell of coffee when culture plates of *B. subtilis takemi* cultured as described above were kept in a refrigerator adjusted at about 5°C" (Specification, ¶ [0017]).

To establish anticipation, it is necessary that the reference disclose each and every element of the claims at issue. Since Heins et al in light of Magnolato fail to disclose each and every element of the invention microorganism, as defined by amended claim 1, Applicant respectfully requests reconsideration and withdrawal of the rejection under 35 U.S.C. § 102(b).

In view of the above amendments and remarks, Applicants request favorable action on all pending claims.

Linking claim

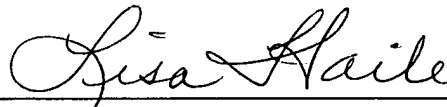
Applicant respectfully submits that amended claim 1 is a "linking claim" under MPEP § 809.03 and, upon allowance of amended claim 1, Applicant requests withdrawal of the restriction requirement as to the non-elected claims and passage to allowance of claims 5-11, 23-25 and 17-18 as being dependent upon linking claim 1.

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If the Examiner would like to discuss any of the issues raised in the Office Action, the Examiner is encouraged to call the undersigned so that a prompt disposition of this application can be achieved.

Respectfully submitted,

Date: January 14, 2004



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Enclosures: References (9 each)
Replacement FIG. 1